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Note verbale dated 16 June 2016 from the Permanent Mission of Eritrea to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the State of Eritrea to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to provide herewith the preliminary response of the State of Eritrea, issued on 8 June 2016, to the report of the commission of inquiry on human rights in Eritrea (A/HRC/32/47).

The Permanent Mission of the State of Eritrea kindly requests the Office of the High Commissioner to circulate the present note verbale and the annex thereto* as a document of the thirty-second session of the Human Rights Council under agenda item 4.

* Circulated as received, in the language of submission only.

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Annex to the note verbale dated 16 June 2016 from the Permanent Mission of Eritrea to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Preliminary response of the Government of Eritrea to the Report of the Commission of Inquiry

A three-person panel, called the "Commission of Inquiry" (COI), is campaigning to take yet another African country, this time Eritrea, to the International Criminal Court.

The COI claims that it "has reasonable grounds to believe that crimes against humanity have been committed in Eritrea since 1991." Yet it has no solid evidence or firm legal basis to support its extreme and unfounded charges.

The report of the COI fails to meet the principles of impartiality, objectivity and non-selectivity as laid out in the guidelines of the United Nations. It also lacks the minimum standards of rigor and professionalism.

The methodology the COI followed in its work is so deeply followed as to seriously compromise its findings and render its conclusions null and void.

First, the COI has been entirely one-sided. It was only interested in one side of the story and only talked to people who agreed with its predetermined conclusions. It bases its sweeping and extreme allegations on the testimony of 500 refugees and asylum-seekers with unknown identity, while disregarding the testimonies of 42,000 Diaspora Eritreans living in over 20 countries who contested its well-known biases. It also ignored the request of 856 Eritreans who asked to appear in person in Geneva to present their testimonies after promising that it would give them a hearing.

Secondly, the COI's standards of evaluating the solidity of the information it received and the "evidence" it was provided with has been woefully inadequate. This has led it to make patently false and easily disprovable serious charges against Eritrea. To cite just one example, the COI has charged that Eritreans live in fear and are unable to voice their opinions, while journalists who visited the country have reported that they are able to speak freely and on camera with people in Eritrea. Consequently, almost all the evidence that the COI claims underpin its accusations against Eritrea do not stand the minimum standards of proof.

Thirdly, the COI lacks all balance as it stubbornly refuses to acknowledge and meaningfully incorporate in its report Eritrea's achievements in the protection and consolidation of human rights as well as any positive developments in the country. To begin with, the COI completely ignores the assessment of the status of social, economic, cultural rights in Eritrea. This is in contravention of the United Nations Declaration of Human Rights, which accords equal importance to all rights. It also makes the Commission's report one-sided, biased and incomplete. It is not difficult to gather that the COI decided to ignore a whole category of human rights precisely because Eritrea's record is impressive and reporting on them would not tally with the picture the COI wants to paint.

The COI has likewise ignored Eritrea's significant achievements in political and civic rights. These include:

- The renewed commitment to and strong measures taken to consolidate the rights of citizens in general, and of women, children and the disabled in particular.
- The efforts to strengthen the judicial system by the promulgation of new, improved laws and efforts to build institutional capacity from the community courts and up

- Ongoing efforts to address the needs and meet the aspirations of young people, to empower them and to provide adequate opportunities for them.
- The setting up of a commission to undertake the process of drafting and ratifying the country's constitution.
- The serious engagement with the UPR process and its acceptance of 92 recommendations, which it is already implementing.
- The cooperation with the UN and the Office of the High Commissioner for Human Rights to consolidate human rights in Eritrea.

Fourthly, the COI ignores fundamental realities which have a profound bearing on the state of the country, including what is effectively a continuing state of war with Ethiopia, the illegal occupation of Eritrean territory which constitutes a flagrant violation of human rights, repeated armed aggression, sanctions and mistaken policies that consider almost all Eritreans asylum-seekers.

Fifth, the COI has repeatedly and routinely overstepped and abused its mandate. It has lobbied countries not to engage with Eritrea even on matters that promote human rights. Its claim that the "human rights situation in Eritrea constitutes a threat to international peace and security" is also way beyond its mediate and its competence. It also reveals it's the extremely politicized nature of its conduct, which has lacked the rudiments of independence, impartiality and professionalism.

Sixth, and most importantly, the COI's against Eritrea is legally indefensible. Although it repeats its accusation without end, the COI fails to prove that the "crimes" it alleges were committed were indeed "persistent, widespread and systematic manner." Its failure to prove the systemic nature of alleged crimes means the preposterous charge of "crimes against humanity" is untenable and no more than a political accusation, which it actually is.

Let's now proceed to consider the specific accusations of the COI.

Crimes since 1991

The COI's incredible, and really laughable, claim that "crimes against humanity" were committed in Eritrea since 1991 reveals its unabashed political stance and is symptomatic of the entire report. Eritrea's hard-won and universally acclaimed independence in 1991 came after three decades of popular struggle for freedom and human rights. Two years later, in a referendum observed by the United Nations and many countries and organisations, and which they described as a national festival, 99.8% of Eritreans, inside and outside the country voted freely for independence. The following years saw impressive progress in all areas-political, economic, social and cultural, including the drafting and ratification of a national constitution in a widely consultative popular process.

The COI denies this well-known and undisputed history and makes the outlandish claim that Eritrean "officials have engaged in a persistent, widespread and systematic attack against the civilian population of Eritrea since May 1991." It goes on to say that these officials "have relied extensively on the commission of crimes to establish and consolidate total control over the Eritrean population."

This accusation, which forms the crucial rational, for the charge of "crimes against humanity flies in the face of the reality already described. There was no need to resort to force to establish control, as the population was fully supportive-indeed the backbone- of the liberation movement and there is no shred of evidence for a persistent, widespread and systematic attack against the civilian population."- the same movement that paid so much sacrifice to defend and protect the population. Twenty-five years on this same population

vividly demonstrated strong support for the independence of the country and the government during the Silver Jubilee Independence celebrations.

Enslavement

The COI goes on to claim that crime of "Enslavement has been committed on an ongoing, widespread, and systematic basis since 2002." What the COI calls enslavement is national service and even though it does not explain the cut-off date of 2002, we can only assume that date refers to the decision on the boundary between Eritrea and Ethiopia by an international tribunal, which was set up following the 1998-2000 war between the two countries.

The COI would have been justified in its view if both belligerents had accepted the boundary decision, normalized their relation and brought the state of war between them to an end. But Ethiopia has yet to accept the ruling, it continues to illegally occupy sovereign Eritrean territory, has launched repeated military attacks and as late as August 2015, its Prime Minister, speaking to Parliament announced plans to launch a full-scale war against Eritrea. In effect, the state of war between the two countries remains, whatever the blinkered "view of the COI" is. COI's accusation is contrary to facts and is without firm legal basis.

As to national service, the COI realizes it is on shaky grounds and tries to hedge its arguments. It lamely admits that compulsory national service is not necessarily a "human rights violation," but it then says that in Eritrea it is a crime against humanity because of the "apparent underlying purposes of the programs and the manner in which they are implemented." Specifically, the COI says the indefinite nature and the use of forced labor make national service an ongoing crime committed by Eritrea since 2002.

Here too, the COI has no legal basis for its charges and it ignores all contrary evidence and positive measures undertaken by the Eritrean government. The purposes of national service in Eritrea are clearly stated in a legal proclamation of 1994 and are three-fold: national defense, economic and social development and national integration. The service is not indefinite although for a time and in certain cases it has been prolonged due the already explained existential threat of war. Massive demobilization took place from 2001 to 2005 in partnership with the World Bank, three years after the cutoff date of 2002, after which according to the COI national service is enslavement. Even after 2005, thousands of national service members, including virtually all women members, have been demobilized.

The COI's charge of forced labor is also without foundation. National service as practiced in many countries does not preclude community service in civilian jobs. In Eritrea over 90% of national service members serve in civilian projects, mainly as teachers and health personnel. Since July 2015, when Eritrea introduced salary raises made possible by a much improved economic situation, they are also receiving attractive salary packages. To misconstrue this as forced labor and enslavement and to press charges of crimes against humanity on this basis is unconscionable and bereft of legality.

The COI claims that national service is the main cause of large migration of Eritreans. Although this is a widely propagated view, it is nonetheless widely off the mark. In fact, the majority of Eritrean migrants are not national service members. Most are demobilized young people as well as those to whom the service does not apply. Another salient fact is that the number of migrants is now declining as a result of the improving economic situation as well as a raft of measures taken by the government to provide more opportunities to the youth.

Apart from "enslavement" which is supposed to have started in 2002, the COI claims the rest of the alleged crimes have been ongoing since May 1991. Let's consider them one by one.

Imprisonment or other severe deprivation of physical liberty and enforced disappearances

The COI charges that "Eritrean officials have committed the crime of imprisonment, a crime against humanity, in a persistent, widespread and systematic manner." A similar charge is levelled on enforced disappearances. To state that there could have been abuses and to claim that this is persistent, widespread and systematic are two different things. While there is no evidence for the latter accusation, it is true that in Eritrea, as many other countries, there may be instances in which some people are wrongfully detained and imprisoned. A number of individuals who abused their position in this regard have been brought to justice and punished and Eritrea continues to make determined effort to prevent their recurrence.

Instead of this balanced assessment, the COI imprudently claims that Eritrea invokes treason and espionage when referring to detainees and states treasonous behavior include attempting to escape military service and trying to leave the country. Here the COI is merely exposing itself as it is now widely known that the Government of Eritrea in fact encourages those who have left the country illegally by providing them with services and assisting them to return or to visit the country. Tens of thousands of them actually participated in Eritrea's 25th anniversary and more are joining them in these festive times.

The COI also makes the extra-ordinary claim that "even those detainees convicted pursuant to judicial proceedings have been deprived of their liberty in violation of fundamental laws of international law." It also summarily dismisses the exemplary community courts, elected courts where at least one of three judges has to be a woman, and which adjudicate over 80% of the judicial cases. This is the COI's way of totally delegitimizing the judicial system in Eritrea.

In fact, Eritrea is working steadfastly to strengthen its judicial system. It has introduced new civil and criminal laws and is undertaking programs to upgrade the competence and professionalism of its judges and lawyers. Indeed, strengthening the judiciary and improving conditions of detention are two areas of active cooperation between Eritrea and the UN system, including the Office of the High Commissioner for Human Rights.

Torture

The COI claims that "the use of torture was, and remains, an integral part of the government's repression of the civilian population." Once again, it has no evidence to substantiate that this is persistent, widespread and systematic. In fact, torture is a crime by Eritrean law. The country has also signed the "International Convention Against Torture" in order to buttress its own laws. As part of its efforts to strengthen the administration of justice, Eritrea is currently working on awareness programs and upgrading the capacity and professionalism of its security people.

Other inhuman acts

Here the COI refers to "guilt by association" and third-party reprisals. This is really baseless as it contradicts not only Eritrea civil and penal codes which explicitly prohibit collective punishment, but more tellingly Eritrean political and civic culture. Eritrea must be one of a few countries where families of imprisoned officials continue to live in government issued houses and where spouses of these officials continue to serve in

sensitive government positions. The COI attempts to mix "guilt by association" with complicity in crime, which is a crime and punishable by law. In Eritrea, legal measures are indeed taken, if there is incontrovertible evidence of complicity.

Persecution

On the issue of persecution, the COI goes into mischief-making as it tries to concoct inexistent ethnic and religious persecution. Eritrea is widely acknowledged to be a model of ethnic and religious harmony. In a region racked by ethnic and religious strife as well as fundamentalism and terrorism, it has been able to maintain peace, stability, a remarkable level of inter-communal tolerance and unity and diversity. It is really stupefying that the COI has the impudence to claim that Eritrean officials "have committed the crime of persecution, a crime against humanity, in a widespread and systematic manner since May 1991." This is really beyond the pale.

Rape

The same can be said about the COI's claim that "rapes have been committed as part of a widespread or systematic attack against the Eritrean civilian population." It is an attack not so much against the government as an offensive disrespect to a cultured and civilized population. In Eritrea rape is very rare, repugnant to society and severely punished by law on those rare occasions when it happens. It is also widely known that Eritrea is a country where women walk the streets at any time of the day or night without fear of physical or sexual attacks. The rights and status that women enjoy in Eritrea is a product of the commitment of the government but more importantly the outcome of their unequaled role in the struggle for freedom and nation-building.

The COI alludes to HIV cases because of widespread rape. The fact is HIV cases in Eritrea have decreased from 6% in 1991 to 0.91 in 2015. The facts simply do not add up. Another accusation at variance with facts on the ground.

Murder

On murder, the COI makes the standard claim that "Eritrean officials have committed murder, a crime against humanity, in a systematic manner since May 1991" again without any proof for its allegation. It also tries half-heartedly to resurrect the discredited accusation of a shoot-to kill policy, with the caveat the "policy has been implemented less rigorously in recent years." In fact, there never has been a shoot-to kill policy and the COI has not been able to produce a single shred of evidence.

Accountability

The COI claims that "particular individuals, including at the highest levels of the State and the PFDJ, and commanding officers, bear responsibility for crimes against humanity." It then dismisses offhand the right of the exercise of national jurisdiction and claims that "there is no genuine prospect of the domestic judicial system holding perpetrators to account." The objective is obvious and sure enough the COI recommends that the UN Security Council refer Eritrea to the ICC.

The COI admits that it is not a judicial body. In other words, its accusations do not meet fundamental standards of accuracy, objectivity, neutrality and legality. For a three-person panel to overstep its mandate and to arrogate to itself draconian powers to sit in judgment over the human rights situation over a quarter of a century, to make the purely political determination that these situation "constitutes a threat to international peace and security," and then to ask the Security Council to refer the matter to the ICC is simply untenable and unheard of.

Conclusion

Eritrea rejects the politically motivated and groundless accusations and the destructive recommendations of the COI. It believes they are an unwarranted attack not only against Eritrea, but also Africa and developing nations. It calls on members of the Human Rights Council and all UN member states to uphold justice and fairness and to end a long train of injustices against the Eritrean people.

For its part, Eritrea, a nation born in the struggle for human rights, and for whom human rights, the whole gamut of them -political, civic, economic, social and cultural- remain the number one priority, will continue to work for the fundamental freedoms and dignity of its people. Eritrea and its people are confident of the justness of their cause and their determination and capacity to succeed.